

ASTHMATIC SCHOOLCHILDREN'S TREATMENT AND
HEALTH MANAGEMENT ACT OF 2004

JULY 14, 2004.—Ordered to be printed

Mr. BARTON of Texas, from the Committee on Energy and
Commerce, submitted the following

R E P O R T

[To accompany H.R. 2023]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2023) to give a preference regarding States that require schools to allow students to self-administer medication to treat that student's asthma or anaphylaxis, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Asthmatic Schoolchildren’s Treatment and Health Management Act of 2004”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Asthma is a chronic condition requiring lifetime, ongoing medical intervention.

(2) In 1980, 6,700,000 Americans had asthma.

(3) In 2001, 20,300,000 Americans had asthma; 6,300,000 children under age 18 had asthma.

(4) The prevalence of asthma among African-American children was 40 percent greater than among Caucasian children, and more than 26 percent of all asthma deaths are in the African-American population.

(5) In 2000, there were 1,800,000 asthma-related visits to emergency departments (more than 728,000 of these involved children under 18 years of age).

(6) In 2000, there were 465,000 asthma-related hospitalizations (214,000 of these involved children under 18 years of age).

(7) In 2000, 4,487 people died from asthma, and of these 223 were children.

(8) According to the Centers for Disease Control and Prevention, asthma is a common cause of missed school days, accounting for approximately 14,000,000 missed school days annually.

(9) According to the New England Journal of Medicine, working parents of children with asthma lose an estimated \$1,000,000,000 a year in productivity.

(10) At least 30 States have legislation protecting the rights of children to carry and self-administer asthma metered-dose inhalers, and at least 18 States expand this protection to epinephrine auto-injectors.

(11) Tragic refusals of schools to permit students to carry their inhalers and auto-injectable epinephrine have occurred, some resulting in death and spawning litigation.

(12) School district medication policies must be developed with the safety of all students in mind. The immediate and correct use of asthma inhalers and auto-injectable epinephrine are necessary to avoid serious respiratory complications and improve health care outcomes.

(13) No school should interfere with the patient-physician relationship.

(14) Anaphylaxis, or anaphylactic shock, is a systemic allergic reaction that can kill within minutes. Anaphylaxis occurs in some asthma patients. According to the American Academy of Allergy, Asthma, and Immunology, people who have experienced symptoms of anaphylaxis previously are at risk for subsequent reactions and should carry an epinephrine auto-injector with them at all times, if prescribed.

(15) An increasing number of students and school staff have life-threatening allergies. Exposure to the affecting allergen can trigger anaphylaxis. Anaphylaxis requires prompt medical intervention with an injection of epinephrine.

SEC. 3. PREFERENCE FOR STATES THAT ALLOW STUDENTS TO SELF-ADMINISTER MEDICATION TO TREAT ASTHMA AND ANAPHYLAXIS.

(a) AMENDMENTS.—Section 399L of the Public Health Service Act (42 U.S.C. 280g) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d) PREFERENCE FOR STATES THAT ALLOW STUDENTS TO SELF-ADMINISTER MEDICATION TO TREAT ASTHMA AND ANAPHYLAXIS.—

“(1) PREFERENCE.—The Secretary, in making any grant under this section or any other grant that is asthma-related (as determined by the Secretary) to a State, shall give preference to any State that satisfies the following:

“(A) IN GENERAL.—The State must require that each public elementary school and secondary school in that State will grant to any student in the school an authorization for the self-administration of medication to treat that student’s asthma or anaphylaxis, if—

“(i) a health care practitioner prescribed the medication for use by the student during school hours and instructed the student in the correct and responsible use of the medication;

“(ii) the student has demonstrated to the health care practitioner (or such practitioner’s designee) and the school nurse (if available) the skill level necessary to use the medication and any device that is necessary to administer such medication as prescribed;

“(iii) the health care practitioner formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours; and

“(iv) the student’s parent or guardian has completed and submitted to the school any written documentation required by the school, including the treatment plan formulated under clause (iii) and other documents related to liability.

“(B) SCOPE.—An authorization granted under subparagraph (A) must allow the student involved to possess and use his or her medication—

“(i) while in school;

“(ii) while at a school-sponsored activity, such as a sporting event; and

“(iii) in transit to or from school or school-sponsored activities.

“(C) DURATION OF AUTHORIZATION.—An authorization granted under subparagraph (A)—

“(i) must be effective only for the same school and school year for which it is granted; and

“(ii) must be renewed by the parent or guardian each subsequent school year in accordance with this subsection.

“(D) BACKUP MEDICATION.—The State must require that backup medication, if provided by a student’s parent or guardian, be kept at a student’s school in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

“(E) MAINTENANCE OF INFORMATION.—The State must require that information described in subparagraphs (A)(iii) and (A)(iv) be kept on file at the student’s school in a location easily accessible in the event of an asthma or anaphylaxis emergency.

“(2) RULE OF CONSTRUCTION.—Nothing in this subsection creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

“(3) DEFINITIONS.—For purposes of this subsection:

“(A) The terms ‘elementary school’ and ‘secondary school’ have the meaning given to those terms in section 9101 of the Elementary and Secondary Education Act of 1965.

“(B) The term ‘health care practitioner’ means a person authorized under law to prescribe drugs subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.

“(C) The term ‘medication’ means a drug as that term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act and includes inhaled bronchodilators and auto-injectable epinephrine.

“(D) The term ‘self-administration’ means a student’s discretionary use of his or her prescribed asthma or anaphylaxis medication, pursuant to a prescription or written direction from a health care practitioner.”.

(b) APPLICABILITY.—The amendments made by this section shall apply only with respect to grants made on or after the date that is 9 months after the date of the enactment of this Act.

SEC. 4. SENSE OF CONGRESS COMMENDING CDC FOR ITS STRATEGIES FOR ADDRESSING ASTHMA WITHIN A COORDINATED SCHOOL HEALTH PROGRAM.

The Congress—

(1) commends the Centers for Disease Control and Prevention for identifying and creating “Strategies for Addressing Asthma Within a Coordinated School Program” for schools to address asthma; and

(2) encourages all schools to review these strategies and adopt policies that will best meet the needs of their student population.

PURPOSE AND SUMMARY

H.R. 2023 directs the Secretary of Health and Human Services to give preference when making asthma-related grants to States that require schools to allow students to self-administer medications for asthma and/or anaphylaxis.

BACKGROUND AND NEED FOR LEGISLATION

Asthma, a chronic lung disease, affects an estimated 17 million Americans. When asthma strikes, airways in the lungs become inflamed and constricted, causing coughing, wheezing, and difficulty

breathing. Each year, nearly 500,000 Americans are hospitalized and more than 5,000 die from asthma. Several medications, when properly administered in a timely fashion, are now available to treat asthma and/or anaphylaxis.

Some schools, however, do not permit students to self-administer medication for asthma or anaphylaxis—even though the parent or guardian of the student has authorized the use of the medication and it is recommended by a health care provider—resulting in an unnecessary delay of potentially life-saving treatments. H.R. 2023 directs the Secretary of Health and Human Services to give preference when making asthma-related grants to States that require schools to allow students to self-administer medications for asthma and/or anaphylaxis.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On Tuesday, June 15, 2004, the Subcommittee on Health met in open markup session and approved H.R. 2023 for Full Committee consideration, as amended, by a voice vote, a quorum being present. On Thursday, June 24, 2004, the Full Committee met in open markup session and favorably ordered H.R. 2023 reported, as amended, by a voice vote, a quorum being present.

COMMITTEE VOTES

There were no record votes taken in connection with ordering H.R. 2023 reported. A motion by Mr. Pickering to order H.R. 2023 reported to the House, as amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 2023 directs the Secretary of Health and Human Services to give preference when making asthma-related grants to States that require schools to allow students to self-administer medications for asthma and/or anaphylaxis.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2023, the Asthmatic Schoolchildren's Treatment and Health Management Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 9, 2004.

Hon. JOE BARTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2023, the Asthmatic Schoolchildren's Treatment and Health Management Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact are Tim Gronniger (for federal costs), and Leo Lex (for the state and local impact).

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 2023—Asthmatic Schoolchildren's Treatment and Health Management Act of 2004

H.R. 2023 would modify the Public Health Service Act by directing the Secretary of Health and Human Services, in making any asthma-related grant to a state, to give preference to states that require schools to permit students to self-administer medication for asthma and anaphylaxis.

The bill would not change the purposes for which the Secretary makes asthma-related grants. CBO estimates that enacting H.R. 2023 would not have a significant effect on the federal budget. Enacting H.R. 2023 would not affect direct spending or revenues.

H.R. 2023 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, but it would alter conditions for the Children's Asthma Treatment Grants Program and other asthma-related grants, giving preferences to states who allow schoolchildren to self-administer asthma medication. While the bill would not alter the total amount of grants available, the new preferences could change the distribution of funds among states.

The CBO staff contacts are Tim Gronniger (for federal costs), and Leo Lex (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates the short title as the “Asthmatic Schoolchildren’s Treatment and Health Management Act of 2004.”

Section 2. Findings

Section 2 states the findings of the bill.

Section 3. Preference for States that allow students to self-administer medication to treat asthma and anaphylaxis

Section 3 requires the Secretary of Health and Human Services when making any grant that is asthma-related, as determined by the Secretary, to give preference to States that require public elementary and secondary schools to permit students to self-administer medication to treat asthma or anaphylaxis. Specifically, the bill requires that the schools permit self-administration of medication if the following criteria are met: (1) a health care practitioner prescribed the medication for use by the student during school hours and instructed the student in the correct and responsible use of the medication; (2) the student has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to use the medication and any device that is necessary to administer such medication as prescribed; (3) the health care practitioner formulated a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours; and, (4) the student’s parent or guardian has completed and submitted to the school any written documentation required by the school, including the treatment plan and other documents related to liability.

With regard to the fourth provision, the Committee does not intend to direct the States to require any particular form or document, nor to increase overall paperwork burdens. Rather, the Committee intends for this provision to emphasize the mutual compliance of parents and schools regarding all required documentation. For example, if a State law or a school asks parents to sign a waiver of liability, or some other document relating to the liability of a school, this provision simply states that the appropriate documentation should be filed.

The school must permit the student to possess and use his or her medication while in school, while at a school-sponsored activity, and in transit to or from school or school-sponsored activities. The school authorization for the student to carry the medication is effective for that school and the same school year it is granted, and must be renewed by the parent or guardian each subsequent school year. The State must also require that backup medication, if provided by a student's parent or guardian, be kept at the school in a location with immediate access. The State must also require that all documentation related to the student's use of asthma and/or anaphylaxis medication be kept on file at the student's school in a location easily accessible in the event of an asthma or anaphylaxis emergency.

Section 3 clearly states that nothing in the bill creates a cause of action or in any other way increased on diminishes the liability of any person under any other law. Section 3 also includes definitions of terms used in the legislation.

Section 4. Sense of Congress commending CDC for its strategies for addressing asthma within a Coordinated School Health Program

Section 4 states that Congress commends the Centers for Disease Control and Prevention for identifying and creating "Strategies for Addressing Asthma Within a Coordinated School Program" for schools. Congress also encourages all schools to review these strategies and adopt policies that will best meet the needs of their student population.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 399L OF THE PUBLIC HEALTH SERVICE ACT

SEC. 399L. CHILDREN'S ASTHMA TREATMENT GRANTS PROGRAM.

(a) * * *

* * * * *

(d) *PREFERENCE FOR STATES THAT ALLOW STUDENTS TO SELF-ADMINISTER MEDICATION TO TREAT ASTHMA AND ANAPHYLAXIS.—*

(1) *PREFERENCE.—The Secretary, in making any grant under this section or any other grant that is asthma-related (as determined by the Secretary) to a State, shall give preference to any State that satisfies the following:*

(A) *IN GENERAL.*—The State must require that each public elementary school and secondary school in that State will grant to any student in the school an authorization for the self-administration of medication to treat that student's asthma or anaphylaxis, if—

(i) a health care practitioner prescribed the medication for use by the student during school hours and instructed the student in the correct and responsible use of the medication;

(ii) the student has demonstrated to the health care practitioner (or such practitioner's designee) and the school nurse (if available) the skill level necessary to use the medication and any device that is necessary to administer such medication as prescribed;

(iii) the health care practitioner formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours; and

(iv) the student's parent or guardian has completed and submitted to the school any written documentation required by the school, including the treatment plan formulated under clause (iii) and other documents related to liability.

(B) *SCOPE.*—An authorization granted under subparagraph (A) must allow the student involved to possess and use his or her medication—

(i) while in school;

(ii) while at a school-sponsored activity, such as a sporting event; and

(iii) in transit to or from school or school-sponsored activities.

(C) *DURATION OF AUTHORIZATION.*—An authorization granted under subparagraph (A)—

(i) must be effective only for the same school and school year for which it is granted; and

(ii) must be renewed by the parent or guardian each subsequent school year in accordance with this subsection.

(D) *BACKUP MEDICATION.*—The State must require that backup medication, if provided by a student's parent or guardian, be kept at a student's school in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

(E) *MAINTENANCE OF INFORMATION.*—The State must require that information described in subparagraphs (A)(iii) and (A)(iv) be kept on file at the student's school in a location easily accessible in the event of an asthma or anaphylaxis emergency.

(2) *RULE OF CONSTRUCTION.*—Nothing in this subsection creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

(3) *DEFINITIONS.*—For purposes of this subsection:

(A) The terms "elementary school" and "secondary school" have the meaning given to those terms in section 9101 of the Elementary and Secondary Education Act of 1965.

(B) The term “health care practitioner” means a person authorized under law to prescribe drugs subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.

(C) The term “medication” means a drug as that term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act and includes inhaled bronchodilators and auto-injectable epinephrine.

(D) The term “self-administration” means a student’s discretionary use of his or her prescribed asthma or anaphylaxis medication, pursuant to a prescription or written direction from a health care practitioner.

[(d)] (e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

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EXCHANGE OF COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, July 14, 2004.

Hon. JOHN A. BOEHNER,
Chairman, Committee on Education and the Workforce, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN BOEHNER: Thank you for your letter regarding H.R. 2023, the “Asthmatic Schoolchildren’s Treatment and Health Management Act of 2003.” As you noted, the Committee on Education and the Workforce was named as a Committee of jurisdiction upon introduction.

I appreciate your willingness not to seek a continued referral on H.R. 2023, or object to the scheduling of the bill for consideration in the House of Representatives. I agree that your decision to forego action on the bill will not prejudice the Committee on Education and the Workforce with respect to its jurisdictional prerogatives on this or similar legislation.

I will include a copy of your letter and this response in the Committee’s report to accompany H.R. 2023.

Sincerely,

JOE BARTON,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND THE WORKFORCE,
Washington, DC, July 13, 2004.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN BARTON: I am writing to confirm our mutual understanding with respect to consideration of H.R. 2023, the Asthmatic Schoolchildren’s Treatment and Health Management Act of 2003, which the Committee on Energy and Commerce ordered fa-

vorably reported on June 24, 2004. This bill was referred to the Committee on Energy and Commerce and in addition to the Committee on Education and the Workforce.

Given the importance of this legislation, I do not intend to ask for continued referral of H.R. 2023, nor will I object to the scheduling of this bill for consideration in the House of Representatives. However, I do so only with the understanding that this procedural route should not be construed to prejudice the Committee on Education and the Workforce's jurisdictional interest and prerogatives on these provisions or any other similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to my Committee in the future. Furthermore, should these or similar provisions be considered in a conference with the Senate, I would expect Members of the Committee on Education and the Workforce be appointed to the conference committee on those provisions.

Finally, I would ask that you include a copy of our exchange of letters on this matter in your report to accompany this bill. If you have questions regarding this matter, please do not hesitate to call me. I thank you for your consideration.

Sincerely,

JOHN A. BOEHNER,
Chairman.

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